

137 Carterford N.Y. 1871

THE DOMINION
CONTROVERTED ELECTIONS ACT,
1874

GENERAL

MADE BY THE

SUPERIOR COURT

FOR THE

PROVINCE OF QUEBEC

*Under and by virtue of the Act of the Dominion of Canada entitled
"The Dominion Controverted Elections Act, 1874"*

QUEBEC:
PRINTED AT L'EVENEMENT

1875



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IN THE SUPERIOR COURT

GENERAL RULES

FOR THE TRIAL OF

CONTROVERTED ELECTIONS

OF MEMBERS OF THE

HOUSE OF COMMONS

Made under and by virtue of the Act of the Dominion of Canada, passed 26th May, A. D. 1874, being the "DOMINION CONTROVERTED ELECTIONS ACT, 1874."

I

On the presentation of an Election Petition, there shall be left with the Prothonotary of the Court, a copy thereof, to be sent to the Returning Officer under Section 8 of the Act.

II

An Election Petition shall contain the following statements:—

1. It shall state the right of the Petitioner to petition within section 7, of the Act.

2. It shall state the holding and result of the Election, and shall briefly state the facts and grounds relied on to sustain the prayer.

III

The Petition shall be divided into Paragraphs, each of which, as nearly as may be, shall be confined to a distinct

portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed of drawing or copying any Petition not substantially in compliance with this Rule, unless otherwise ordered by the Court or Judge.

IV

The Petition shall conclude with a Prayer, as for instance, that some specified person should be declared duly returned or elected, or that the Election should be declared void, or that a return may be enforced (*as the case may be*), and shall be signed by all the Petitioners.

V

The following form, or one to the like effect, shall be sufficient:

IN THE SUPERIOR COURT.

"THE DOMINION CONTROVERTED ELECTIONS ACT, 1874."

Election of a Member for the House of Commons for
(*state the place*) holden, on the day of A. D.

Dominion of Canada, } The Petition of A of or of A of
Province of Quebec. } and of B of , (*as the case*
To wit: } *may be*) whose names are subscribed.

1. Your Petitioner A is a person (*or if more than one, say your Petitioners are persons*) who had a right to vote at the above Election (or was a candidate at the above Election.)

2. And your Petitioners state that the Election was holden on the day of A. D. when AB, CD and EF were candidates, and the Returning Officer has returned AB, as being duly elected.

3. And your Petitioners say that (*here state the facts and grounds on which the Petitioners rely making each ground a separate paragraph.*)

Wherefore your Petitioners pray that it may be determined that the said AB was not duly elected or returned, and that the Election was void (or that the said EF was duly elected and ought to have been returned.) or, *as the case may be.*

Signed.

A.

B.

VI

Evidence need not be stated in the Petition, but the Court or a Judge may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial, and upon such terms as to costs and otherwise as may be ordered.

VII.

The Returning officer shall publish any Petition sent to him under section 8, of the Act, and also any other document sent to him for publication in accordance with the provisions of the Act, or of these rules, by delivering a copy of such Petition or document to the Registrar of the Registry Office in such Electoral Division, and if there be more than one such Registry office, in such Electoral Division, then to each such Registrar, and if there be no such Registry Office within such Electoral Division, then to the Municipal Secretary Treasurer having his office in the said Electoral Division nearest to the place where the said Election was held. And if there be no such Registrar or Secretary Treasurer in the said Electoral Division then to some other public officer in the said Electoral Division to be selected by the said Returning Officer; and by causing without delay a succinct notice of such publication to be given in one Number of the *Quebec Official Gazette*, and also in two numbers of a newspaper in the English language, and in two numbers of a newspaper in the French language published or circulating in such Electoral Division, if such papers there be, and it shall be the duty of each, such Registrar, Secretary-Treasurer or other Public Officer, to allow all persons to take communication of any such petition or other document without exacting any fee therefor, and any document sent to the Sheriff for publication shall be published in like manner.

VIII

When a petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of and the party defending the Election or return, shall each, six days before the day appointed for trial, deliver to the Prothonotary of the Court and also at the respective domiciles of the Petitioners and Respondent, (*as the case may be,*) a list of the votes intended to be objected to,

and of the heads of objection to each such vote, and the Prothonotary of the Court shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the Court or a Judge, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs or otherwise, as may be ordered.

IX

When the Respondent in a Petition under the Act, complaining of an undue return, and claiming the seat for some person, intends to give evidence to prove that the Election of such person was undue, pursuant to the 66th section of the Act, such Respondent shall, six days before the day appointed for trial, deliver to the Prothonotary of the Court and also at the domicile of the Petitioner, a list of the objections to the Election upon which he intends to rely. And the Prothonotary of the Court shall allow inspection and office copies of such list to all parties concerned; and no evidence shall be given by a Respondent of any objection to the Election, not specified in the list, except by leave of the Court, or a Judge and upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs as may be ordered, and the Judge may order like particulars as in the case of the Petitioner.

X

With the Petition there shall be fyled in writing an election of domicile by the Petitioner, or by his Attorney, if he has one, at some place within a mile of the Office of the Prothonotary where the said Petition shall be deposited. In default of his doing so the Office of the said Prothonotary shall be deemed to be the domicile of the said Petitioner for all the purposes of his said Petition.

If the Petitioner appear by Attorney the latter shall, at the same time, fyle a written appearance.

XI

The Respondent shall, within five days from the service of the Petition upon him as herein provided, fyle at the office of the Prothonotary a written appearance signed by him or his Attorney, and a written election of domicile shall

be made and fyled by the said Respondent or his Attorney, in the same manner as required of the Petitioner, by the last preceding rule; and in default of his so doing the office of the said Prothonotary shall be deemed to be his domicile for all the purposes of the Petition.

XII

The Petitioner or Respondent may, at any time after the delay above mentioned, on leave previously obtained from the Court or Judge appear by Attorney, who shall forthwith fyle an appearance and an election of domicile at the Office of the Prothonotary, where afterwards service of documents may be legally effected, and the Prothonotary of the Court shall keep a book or books at his office, in which he shall enter all the elections of domicile made and fyled at his Office under the present rules, which book shall be open to inspection by any person during office hours.

XIII

The Prothonotary of the Court shall, upon the presentation of the Petition, forthwith send a copy of the Petition to the Returning Officer, pursuant to section 8 of the Act, and shall therewith send the name of the Petitioner's Attorney if any, and give the elected domiciles if any made as prescribed, and if none made shall say so, and the Returning Officer shall forthwith publish those particulars along with the Petition. The cost of publication of this and any other matter required to be published by the Returning Officer, shall be paid by the Petitioner, or person moving in the matter, and shall form part of the general costs of the Petition.

XIV

In case of evasion of service, the affixing in a conspicuous place in the office of the Prothonotary of the Court, a notice of the Petition having been presented, stating the Petitioner, the Prayer, and the fact that money has been paid into Court as security under the Act, shall be deemed equivalent to personal service if so ordered by a Judge.

XV

All claims at law or in equity to money deposited, or to be deposited for payment of costs charges and expenses

payable by the Petitioners, pursuant to section 8 of the Act, shall be disposed of by the Court or a Judge.

XVI

Money so deposited shall, if and when the same is no longer needed, for securing payment of such costs charges and expenses, be returned or otherwise disposed of as justice may require, by rule of the Court or order of a Judge.

XVII

Such rule or order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for, as the Court or Judge may require.

XVIII

The rule or order may direct payment either to the party who deposited the same, or to any person entitled to receive the same.

XIX

Upon such rule or order being made the amount may be paid by the Prothonotary.

XX

The Prothonotary of the Court shall keep a book open to inspection of all parties concerned, in which shall be entered from time to time, the amount and the Petition to which it is applicable, which book may be inspected without payment of any fee.

XXI

The time and place of the trial of each Election petition shall be fixed by the Court, and notice thereof shall be given in writing by the Prothonotary of the Court, by affixing the same in some conspicuous place in his office, sending one copy by the post to the Petitioner, another to the Respondent, and a copy by the post to the Sheriff of the District where the Election Petition is to be tried, fifteen days before the day appointed for the trial, The Sheriff shall forthwith publish the same in the Electoral District.

XXII

The affixing of the notice of trial at the office of the Prothonotary of the Court shall be deemed and taken to be notice in the prescribed manner within the meaning of the Act, and such notice shall not be vitiated by any mis-carriage of, or relating to, the copy or copies thereof to be sent as already directed.

XXIII

The notice of trial may be in the following form :—

IN THE SUPERIOR COURT.

" THE DOMINION CONTROVERTED ELECTIONS ACT, 1874."

Election Petition of (name the Electoral Division). Take notice that the above Petition (or Petitions) will be tried at
on the day of and on
such other subsequent days as may be needful.

Dated the day of

By order

(Signed)

A. B.

P. S. C.

XXIV

At any time after an Election Petition is filed, either party by order of the Court or a Judge, may have production and inspection of all books, lists, commissions, ballots, certificates, statements, papers, documents and returns whatsoever, relating to the Election, returned to, or in possession of the Clerk of the Crown in Chancery, at such place and in such manner, and upon such terms as the Court or Judge shall direct. And for the purpose of such production and inspection, and for the purposes of the trial of the Election Petition, the Clerk of the Crown in Chancery shall deliver or transmit as and when directed by Rule of Court or Judge's order, the said books, lists, commissions, ballots, certificates, statements, documents, papers and returns in such manner and to such officer as by Rule of Court or Judge's order shall be directed.

The said books, lists, commissions, ballots, certificates, statements, documents, papers and returns to be returned to the custody of the Clerk of the Crown in Chancery after the trial of the Petition, or after the purpose has been served for which their delivery or transmission was required.

XXV

A Judge may from time to time by order made upon the application of a Party to the Petition, or by notice in such form as the Judge may direct, to be sent to the Sheriff, postpone the commencement of the trial to such day as he may name, and such notice when received, shall be forthwith made public by the Sheriff.

XXVI

In the event of the Judge not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall, *ipso facto*, stand adjourned to the ensuing day, and so from day to day, until the arrival of the Judge.

XXVII

No formal adjournment of the Court for the trial of an Election Petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day, until the enquiry is concluded, and in the event of the Judge who begins the trial being disabled by illness or otherwise, it may be recommenced and concluded by any other of the Judges.

XXVIII

" The application to state a special case may be made a Rule in the Court when sitting, or by petition before a Judge upon hearing the parties.

XXIX

All affidavits and papers in any Election matter in Court, or in any Court for the trial of an Election Petition, may be entitled as follows :—

IN THE SUPERIOR COURT.

"THE DOMINION CONTROVERTED ELECTIONS ACT, 1874."

Election of a Member for the House of Commons for
(*name the Electoral Division.*)

Dominion of Canada. }
Province of Quebec. }
To wit :

XXX

The reasonable costs of any witness shall be ascertained by the Clerk of the Court, and the certificate allowing them shall be under his hand.

XXXI

The order of a Judge to compel the attendance of a person as a witness may be in the following terms :

Court for the trial of an Election Petition for (*complete the title of the Court*), the day of

To A. B. (*describe the person*). You are hereby required to attend before the above Court at (*place*) on the day of , at the hour of (*or forthwith as the case may be*), to be examined as a witness in the matter of the said Petition, and to attend the said Court until your examination shall have been completed.

As witness my hand.

A. B.,
Judge of the said Court.

XXXII

In order to the commitment of any person for contempt, the warrant may be as follows :—

At a Court holden on at for the trial of an Election Petition for the (*here name the Electoral Division*), before the Honorable and one of the Judges pursuant to the "Dominion Controverted Elections Act 1874,"

Whereas A. B. has this day been guilty, and is by the said Court adjudged to be guilty, of a contempt thereof:—
The said Court does therefore sentence the said A. B. for

his said contempt to be imprisoned in the Common Gaol for the District of _____, and to pay to Our Lady the Queen a fine of \$ _____, and to be further imprisoned in the said Gaol until the said fine be paid. And the Court further orders that the Sheriff of the said District (or as the case may be), and all constables and officers of the Peace of any District or place where the said A. B. may be found, shall take the said A. B. into custody, and convey him to the said Gaol, and there deliver him into custody of the Gaoler thereof, to undergo his said sentence. And the Court further orders the said Gaoler to receive A. B. into his custody, and that he shall be detained in the said Gaol in pursuance of the said sentence.

Signed the

day of

A. D.

(To be signed by the Judge.)

XXXIII

Such warrant may be made out and directed to the Sheriff or other person having the execution of process of the Superior Court as the case may be, and to all Constables and Officers of the Peace of the District or place where the person adjudged guilty of contempt may be found; and such warrant shall be sufficient without further particularity, and shall and may be executed by the persons to whom it is directed or any or either of them.

XXXIV

As to all Interlocutory Questions and Incidental Matters, when not otherwise provided by law, or by the rules of practice, a Judge in Vacation shall have the same power as the Court in Term.

XXXV.

Notice of an application for leave to withdraw a petition shall be in writing and signed by the Petitioners or their Attorney specially authorized thereto. It shall state the ground on which the application is intended to be supported. The following form shall be sufficient:

IN THE SUPERIOR COURT.

"THE DOMINION CONTROVERTED ELECTIONS ACT, 1874."

(Name the Electoral Division) Petition of (state Petitioner) presented _____ day _____ The Petitioner pro-

poses to apply to withdraw his Petition upon the following ground (here state the ground), and prays that a day may be appointed for hearing his application.

Dated this day of

(Signed)

XXXVI

The notice of application for leave to withdraw shall be left at the office of the Prothonotary or Clerk of the Court, where the proceedings are then being had.

XXXVII

A copy of such notice of the intention of the Petitioner to apply for leave to withdraw his Petition shall be given by the Petitioner to the Respondent and to the Returning Officer, who shall make it public in the Electoral Division to which it relates; and shall be forthwith published by the Petitioner in the *Quebec Official Gazette*.

The following may be a form of such notice :—

IN THE SUPERIOR COURT.

"THE DOMINION CONTROVERTED ELECTIONS ACT, 1874."

In the Election Petition for in which
is Petitioner, and Respondent.

Notice is hereby given that the above Petitioner has on the day of lodged at the office of the Prothonotary of the Court, notice of an application to withdraw the Petition, of which notice the following is a copy (set it out), and take notice that, by the rule made by the Judges of the said Superior Court, any person who might have been a Petitioner in respect of the said Election may, within ten days after publication by the Returning Officer of this notice, give notice in writing of his intention on the hearing, to apply for leave to be substituted as a Petitioner.

(Signed)

XXXVIII

Any person who might have been a Petitioner in respect of the Election to which the Petition relates, may, within ten days after such notice is published by the Returning Officer, give notice in writing signed by him, or on

his behalf, to the Prothonotary where the proceedings are then being had, of his intention to apply at the hearing to be substituted for the Petitioner, but the want of such notice shall not defeat such application, if in fact made at the hearing.

XXXIX

The time and place for hearing the application shall be fixed by a Judge, and whether before the Court or before a Judge, as he may deem advisable, but shall be not less than ten days after the notice of the intention to apply has been given to the Clerk in manner as hereinbefore provided, and notice of the time and place for the hearing shall be given to such person or persons, if any, as shall have given notice to the Prothonotary of the Court of an intention to apply to be substituted as Petitioners, and otherwise in such manner and at such time as the Judge directs.

XL

Notice of abatement of a Petition by death of the Petitioner or surviving Petitioner, under Section 56, of the said Act, shall be given by the party or person interested, in the same manner as notice of an application to withdraw a Petition; and the time within which application may be made to the Court or Judge by motion or Petition to a Judge to be substituted as a Petitioner, shall be one calendar month, or such further time as, upon consideration of any special circumstances, the Court or Judge may allow.

XLI

If the Respondent dies, or is summoned to Parliament as a Member of the Senate, or if the House of Commons have resolved that his seat is vacant, any person entitled to be a Petitioner, under the Act in respect of the Election to which the Petition relates, may give notice of the fact in the Electoral District, by causing such notice to be published in the *Quebec Official Gazette*, and by leaving a copy of such notice signed by him, or, on his behalf, with the Returning officer, and a like copy with the Prothonotary of the Court where the proceedings are being had.

XLII

The manner and time of the Respondent giving notice to the Court that he does not intend to oppose the Petition,

shall be by leaving notice thereof in writing at the office of the Prothonotary of the Court, signed by the Respondent, six days before the day appointed for trial, exclusive of the day of leaving such notice.

XLIII

Upon such notice being left at the office of the Prothonotary of the Court, he shall forthwith send a copy thereof by the post to the Petitioner or his Agent, and to the Sheriff, who shall cause the same to be published in the Electoral Division.

XLIV

The time for applying to be admitted as a Respondent in any of the events mentioned in the 57th section of the Act shall be within ten days after such notice is given as hereinbefore directed, or such further time as the Court or a Judge may allow.

XLV

Six days before the time appointed for the trial of any Election Petition, the Petitioner shall leave with the Prothonotary, for the use of the Judge at the trial, fairly written on one side of the paper only, a copy of the Petition and of all the proceedings thereon, which show the several matters to be tried—including the particulars of objections on either side; the correctness of which copy, in so far as the proceedings are filed with the Prothonotary, shall be certified by the said Prothonotary. The Judge may allow amendment of the said copy, or in default of such copy being delivered, the Judge may refuse to try the Petition, or may allow a further time for delivery of the copy, or may adjourn the trial—in every case upon such terms, as to costs and otherwise, as the Judge shall see fit to impose.

XLVI

Costs shall be taxed and certified by the Prothonotary of the Court where the proceedings took place, subject to revision by one of the Judges within fifteen days.

XLVII

When the place and time for the hearing of the case and the production of evidence shall have been fixed, each of the parties shall be bound, forthwith, to elect a domicile

within a mile of the place so fixed ; and in default thereof, all services required to be made, during the trial, respecting proceedings to be had before the Judge, on any party so in default, may be made at the Office of the Prothonotary where the said petition is tried.

XLVIII

After the trial of any Election Petition the Judge shall return to the Prothonotary of the Court the evidence and proceedings before the said Judge, and his finding on the said Petition.

XLIX

Whenever an Election Petition shall have been inscribed for hearing before the Court of Review in the manner prescribed by law, the Petitioner and the Respondent respectively shall, at least five days before the day fixed for such hearing, print and fyle with the Prothonotary of the Superior Court where the said Petition is to be heard, twenty cases containing a statement of the grounds and reasons submitted to the Court for the maintenance and rejection respectively of the said Petition — and such statements shall be divided into distinct items or articles, each of which shall be regularly numbered in succession and shall in a summary manner explicitly set out and state each particular ground or reason as aforesaid, with the point of law or fact upon which such ground or reason shall rest. No party shall be heard upon any ground or reason other than those so set out in his said cases, except by leave of the Court. The Petitioner and the Respondent respectively shall print *in extenso* the evidence by them respectively adduced, as a part of their case, or such part thereof as, by consent in writing of all parties, shall be declared the only evidence material to be considered by the Court of Review ; but where these parties have been put to the expense of a stenographer, then it shall not be necessary to have the evidence printed. And if the cases of the Petitioner be not so delivered and fyled within the time prescribed, or within such further time as the Court of Review or a Judge may allow for fyling the same, the Petition shall be deemed to be deserted, and, on motion of the Respondent, shall be dismissed with costs. And if the cases of the Respondent be not so likewise delivered and fyled as aforesaid, such Respondent may be declared to have deserted his defence, or such other order in the premises may be rendered as the Court may deem just and expedient, and the Petition may

be heard *ex parte* on the part of the Petitioner, and Judgment rendered therein without the intervention of the Respondent.

L

No proceedings under "The Dominion Controverted Elections Act, 1874," shall be defeated by any formal objection.

LI

Any rule made or to be made in pursuance of the Act shall be published by a copy thereof being put up in the office of any Prothonotary of the said Superior Court.

(Signed)

W. C. MEREDITH, C. J. S. C.
A. LAFONTAINE, J. S. C.
A. POLETTE, J. S. C.
A. STUART.
J. A. BERTHELOT, J. S. C.
T. J. J. LORANGER, J. S. C.
L. V. SICOTTE, J. S. C.
J. G. JOHNSON, J.
JOS. N. BOSSÉ.
J. MAGUIRE, J. S. C.
R. MACKAY, J. S. C.
F. W. TORRANCE, J.
N. CASALT, J. S. C.
H. E. TASCHEREAU, J. S. C.
CHRISTN. DUNKIN, J. S. C.
U. J. TESSIER, J. S. C.
A. B. ROUTHIER, J. S. C.
L. J. OLIVIER, J. S. C.
M. DOHERTY, J. S. C.
H. W. CHAGNON, J. C. S.
L. BÉLANGER, J. C. S.
M. A. PLAMONDON, J. S. C.
L. B. CARON, J. C. S.

Published by a copy being put up in the Office of the Prothonotary of the Superior Court for the District of Quebec, at Quebec, this twenty-eighth day of August, 1875.

FISET, BURROUGHS & CAMPBELL,
P. S. C.